

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:	:	Chapter 11
Midnight Madness Distilling LLC,	:	Case No. 21-11750-mdc
Debtor.	:	
	:	

**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF ETOH
WORLDWIDE LLC, AND AGTECH VI, LLC TO DEBTOR’S EXPEDITED
MOTION FOR ENTRY OF AN ORDER: (I) APPROVING THE SALE OR
SALE OF UP TO SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS,
AND THE ASSUMPTION AND ASSIGNMENT OF CERTAIN
EXECUTORY CONTRACTS AND UNEXPIRED LEASES,
(II) APPROVING CERTAIN BIDDING PROCEDURES, ASSUMPTION
AND ASSIGNMENT PROCEDURES, AND THE FORM AND MANNER
OF NOTICE THEREOF, (III) SCHEDULING HEARINGS FOR SUCH
RELIEF AND (IV) GRANTING RELATED RELIEF**

ETOH Worldwide LLC (“ETOH”) and Agtech VI, LLC (“Agtech”), creditors in the above-captioned action, hereby object in part to the Debtor’s Expedited Motion For Entry of An Order: (1) Approving the Sale or Sale of Up to Substantially All of the Debtor’s Assets, and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (II) Approving Certain Bidding Procedures, Assumption and Assignment Procedures and the Form and Manner of Notice Thereof, (III) Scheduling Hearings for Such Relief and (IV) Granting Relief (ECF 4, the “Sale Motion”), and in support thereof state as follows:

1. On the petition date, the Debtor filed the Sale Motion.
2. In the Sale Motion, the Debtor sought this Court’s approval to sell substantially all its assets to ETOH.

3. On August 12, 2021, this Court entered an Order (I) Scheduling a Hearing to Consider Approval of the Sale or Sales of Substantially All of the Debtor's Assets, and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (II) Approving Certain Bidding Procedures, Assumption and Assignment Procedures, and the Form and Manner of Notice Thereof, (III) Approving Payment Expense Reimbursement Under Certain Conditions, and (IV) Granting Related Relief (ECF 110, the "Procedures Order"). The Procedures Order provides for an auction to obtain the highest and best bid for the Debtor's assets.

4. In addition, the Procedures Order provides that, if ETOH is not the successful bidder at the auction, ETOH is entitled to seek reimbursement from the Debtor's estate of up to \$100,000 of fees and expenses in connection with the negotiation and entry into the asset purchase agreement between the Debtor and ETOH, due diligence with respect to the transactions contemplated therein, and seeking bankruptcy court approval thereof (the "Expense Reimbursement").

5. The auction was held on August 25, 2021, and Millstone Spirits, LLC ("Millstone") was the successful bidder.

6. As part of Millstone's bid, it agreed to pay certain administrative expenses arising from executory contracts and/or unexpired leases that are not being assumed and assigned to Millstone.

7. ETOH and Agtech are counterparties to executory contracts and/or unexpired leases that are not being assumed and assigned to Millstone. As part of its winning bid, Millstone agreed to pay administrative expenses owed to ETOH and Agtech.

8. Although the auction occurred more than two weeks ago, ETOH and Agtech have not received the final form of Asset Purchase Agreement between the Debtor and Millstone or a proposed sale order.

9. Accordingly, in order to reserve and protect their rights and interest, ETOH and Agtech object to the entry of a sale order that does not address the following issues:

a. ETOH and Agtech have administrative claims against the Debtor for amounts due under their executory contracts and/or unexpired leases with the Debtor. Millstone agreed to pay these administrative claims as part of its successful bid. ETOH and Agtech object to the entry of a sale order approving an asset purchase agreement that does not require Millstone to pay their administrative claims or otherwise impairs their rights.

b. ETOH is entitled to seek the Expense Reimbursement upon closing of a sale of the Debtor's assets to Millstone. ETOH objects to the entry of a sale order approving an asset purchase agreement that impairs ETOH's right to the Expense Reimbursement in any way.

c. In addition, the Procedures Order requires that ETOH seek approval of the expense reimbursement within a certain amount of time after a closing of a sale. ETOH respectfully requests that any sale order provide that the Debtor and Millstone must promptly notify ETOH: (1) when a closing is scheduled, and (2) when a closing occurs.

10. ETOH and Agtech reserves the right to assert any other available objections arising from the Asset Purchase Agreement between the Debtor and Millstone and the proposed sale order, once those are provided to ETOH and Agtech.

WHEREFORE, ETOH Worldwide LLC and Agtech VI, LLC respectfully request that this Court enter an order on the Sale Motion approving a sale to Millstone only if it satisfactorily addresses the foregoing objections, and otherwise does not impair their rights.

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

Dated: September 9, 2021

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